

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.W.,

Defendant and Appellant.

A155566, A156123

(Contra Costa County
Super. Ct. No. J15-00632)

In this consolidated appeal, A.W. (Minor), a ward of the juvenile court under Welfare and Institutions Code section 602, appeals two dispositional orders directing him to complete all phases of the county's Youthful Offender Treatment Program (YOTP). He contends each of the orders improperly delegated the court's authority to determine the length of his confinement to the probation department. We affirm the orders.

BACKGROUND

In July 2015, Minor was declared a ward pursuant to Welfare and Institutions Code section 602, subdivision (a)¹ after he admitted violations of Vehicle Code section 10851, subdivision (a) (unlawful driving or taking of a vehicle) and Vehicle Code section 20002, subdivision (a) (misdemeanor hit-and-run with property damage). At the

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

disposition hearing, he was ordered to complete a six-month program at Orin Allen Youth Rehabilitation Facility (Orin Allen).

Between September 2015 and June 2017, the juvenile court sustained five petitions to revoke Minor's probation, resulting in court orders directing further out-of-home placements.²

On February 15, 2018, the District Attorney filed a supplemental juvenile wardship petition pursuant to section 602, subdivision (a). The juvenile court sustained the petition following a contested hearing, finding that Minor violated Penal Code section 29610 (felony possession of a firearm by a minor). The court ordered Minor to complete a 12-month program at Orin Allen, as well as a 180-day conditional ranch aftercare period.³

In July 2018, Minor was charged with another probation violation for allegedly escaping Orin Allen without permission. After Minor admitted the violation, on August 22, 2018, the juvenile court committed Minor to YOTP for a period not to exceed two years, 27 days, or until he reaches the age of 21, whichever occurs first, and ordered him to "[c]omplete all phases of the program, follow all treatment requirements [and] obey all rules and regulations."⁴ The court also scheduled a "YOTP Review" for August 21, 2019. Minor appealed this August 2018 order in Case No. A155566.

² We affirmed one of these dispositional orders in *In re A.W.* (Mar. 27, 2018, A152281) [nonpub. opn.].

³ We affirmed these orders in *In re A.W.* (May 13, 2019, A154033) [nonpub. opn.].

⁴ Minor requests we take judicial notice of Contra Costa County Probation Department's website describing YOTP and its YOTP handbook, and the People join the requests. We grant the requests.

The website explains: "YOTP is a 30-bed boys treatment program located inside Juvenile Hall. The program is designed for the more sophisticated, older residents, generally between 16 and 19 years of age. The program goal is to develop pro-social skills, critical thinking and reasoning, independent life skills, self-control, structure and family reunification. There are five phases to the program, and the resident's program length is determined by their successful completion of each phase."

In October 2018, he again faced a notice of probation violation for allegedly violating YOTP rules by fighting with another ward. After he admitted this violation, on October 17, 2018, the juvenile court ordered Minor to “return to YOTP to restart [the] program” and “successfully complete all phases of the program, follow all treatment requirements, and obey all rules and regulations.” The court’s order further noted its authority to impose 1 year, 336 days of confinement. Minor appealed this October 2018 order in Case No. A156123. We consolidated the appeals.

DISCUSSION

A. Standard of Review

We review the issues presented in this consolidated appeal de novo. (See *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314 [whether a juvenile court has improperly delegated authority reviewed de novo]; *In re I.V.* (2017) 11 Cal.App.5th 249, 261 [constitutional challenges to probation conditions reviewed de novo].)

B. Separation of Powers

Minor contends the dispositional orders of August and October 2018 impermissibly delegated authority to determine the length of his commitment to the probation department. According to Minor, the orders violate the state Constitution’s separation of powers clause because probation, rather than the juvenile court, determines whether he has completed each phase of YOTP, the length of his stay in the program, and whether he will be released. We disagree.

Article III, section 3 of the California Constitution, provides, “The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” (Cal. Const., Art. III, § 3.) “It is well settled that courts may not delegate the exercise of their discretion to probation officers.” (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368,

The handbook explains that YOTP consists of an orientation program of about four weeks, followed by three phases of at least 12 weeks each, and a final phase of at least six months to be spent on probation outside juvenile hall, with the first 90 days on electronic monitoring.

1372.) But “a court may dictate the basic policy of a condition of probation, leaving specification of details to the probation officer.” (*In re Victor L.* (2010) 182 Cal.App.4th 902, 919.)

In re J.C. (2019) 33 Cal.App.5th 741 (*J.C.*), rejected an improper delegation claim similar to Minor’s. There, as here, the juvenile court ordered a minor to participate in YOTP and to successfully complete all phases of the program. (*Id.* at pp. 743-744.) The juvenile court declined a fixed term of commitment, explaining that it was a 10-month program if a minor progressed on schedule but in practice different minors progressed at different paces. (*Id.* at p. 744.) The juvenile court set a “ ‘YOTP review date’ ” hearing seven months after the disposition order. (*Ibid.*) On appeal, the minor contended the juvenile court impermissibly delegated the authority to determine the length of his commitment because the probation officer would determine whether and when he successfully completed YOTP, which in turn would determine when he would be released. (*Id.* at pp. 744-745.) *J.C.* rejected this argument.

The *J.C.* court relied on *In re Robert M.* (2013) 215 Cal.App.4th 1178, (*Robert M.*), which considered a challenge to a juvenile court order that required a minor to “successful[ly] complet[e]” sex offender counseling at the Division of Juvenile Facilities (DJF), before returning to the juvenile court for possible modification of his sentence. (*J.C.*, *supra*, 33 Cal.App.5th at p. 745.) In *Robert M.*, the court noted that when a ward is placed in a residential treatment home or juvenile hall, he is answerable on a daily basis to those who operate the program but that “does not change the ultimate responsibility of the juvenile court for the ward’s supervision and control.” (*Robert M.*, *supra*, 215 Cal.App.4th at p. 1185.) The order did not impermissibly intermingle the responsibilities of probation and DJF because the juvenile court retained supervision and control over the minor. (*Ibid.*) Likewise, the *J.C.* court concluded the juvenile court “retain[ed] the ultimate authority to determine whether and when Minor successfully complete[d] [the treatment program].” (*J.C.*, *supra*, 33 Cal.App.5th at p. 746.)

The program handbook supported the *J.C.* court’s analysis. (*J.C.*, *supra*, 33 Cal.App.5th at p. 746.) Like the YOTP handbook in the record before us, it stated,

“ ‘Your commitment, as ordered by the court[,] is for the maximum custody time allowed based on your charges or a period not to exceed your 21st birthday, whichever comes first. A court review will be set by your Deputy Probation Officer prior to your successful completion of phase three[.] [Y]our [Deputy Probation Officer] will then inform the court of your progress, and whether you should be released to Phase Four, GPS Supervision / Community Aftercare.’ ” We agree with the *J.C.* court that “[t]his description plainly contemplates the probation officer will provide the juvenile court with an opinion about whether the minor has successfully completed the program and will make a recommendation to the court regarding the minor’s release. The court will then make the final determination on these issues.” (*Ibid.*)

The analysis in *J.C.* is persuasive, and on similar facts, we reach the same conclusion. The juvenile court’s August and October 2018 dispositional orders set Minor’s maximum term of confinement and ordered Minor to “complete all phases of the [YOTP] program.” As in *J.C.*, these orders did not delegate authority to probation officials to determine whether and when Minor successfully completes YOTP. Such authority remained ultimately with the juvenile court, so there was no improper delegation.

Minor contends the *J.C.* court should not have relied upon *Robert M.* because it did not address the improper delegation of the juvenile court’s authority. Even so, *Robert M.* and this case both challenge the impact of a commitment order on an administrative agency’s supervision and control over a minor in a court-ordered custodial treatment program. *Robert M.*’s analysis, which observes that the juvenile court retains the ultimate authority to determine whether a minor successfully completes a program despite the administrative entity’s day-to-day oversight, applies equally in this case.⁵

⁵ We do not address Minor’s arguments distinguishing *In re L.R.* (2019) 32 Cal.App.5th 334. While Minor’s appeal was pending, the opinion in that case was vacated and the cause remanded in *In re L.R.* (Mar. 29, 2019, A154437) [nonpub. Opinion], making the opinion not citable.

Minor further argues, “[U]nlawful delegation of authority cannot be papered over with the general proposition that a juvenile court ultimately retains jurisdiction and control over the youth.” He contends “because probation—and only probation—determines whether a youth advances from one phase of the program to another, and whether a youth has successfully completed Phase Three” and should be released to aftercare, “it is probation—not the juvenile court—that determines the length of the youth’s commitment.” We disagree that under this scheme the juvenile court has abdicated its judicial role. As Minor acknowledges, the juvenile court is able to overrule a phase decision by probation. The juvenile court also considers the minor’s progress in review hearings, like the one scheduled for Minor in August 2019. There is also no dispute that the court retains the ultimate authority to determine whether the minor has successfully completed the program. (See *J.C.*, *supra*, 33 Cal.App.5th at p. 747.) We have no reservations about probation making decisions with respect to a youth’s progress through YOTP in the first instance, when the court holds review hearings and retains the ability to overrule those decisions. (See *ibid.*)

Minor argues that review hearings do not make the “delegation of the juvenile court’s duty to set the minor’s commitment length . . . any less unlawful.” But our conclusion does not turn on the availability of review hearings. Rather, periodic review supports our view that the court retains ongoing authority over the ward.

C. Due Process

Minor also contends the dispositional orders violate his due process rights. He says these orders violate section 777 and due process because they give probation discretion to determine whether Minor “has violated a probation condition by not successfully completing a certain phase of the YOTP program, and requiring him to repeat that phase, without any judicial oversight” or a noticed hearing. We disagree.

Section 777 provides: “An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order

by directing commitment to the Youth Authority shall be made only after a noticed hearing.” (§ 777.) The orders at issue here commit Minor to YOTP for a maximum term of confinement and direct him to “complete all phases of the program.” Neither changes or modifies a previous disposition by removing Minor from his parent’s physical custody or seeks to change or modify his commitment to YOTP.

For similar reasons, Minor’s reliance on *In re Gabriel T.* (2016) 3 Cal.App.5th 952 (*Gabriel T.*), is misplaced. There, after admitting a violation of probation, the minor was ordered to the Correctional Academy for 12 months consisting of six months of boot camp and six months in an aftercare program. (*Id.* at p. 957.) The juvenile court order stated: “At any time during the aftercare component the minor may be returned to the Correctional Academy for a one time remediation of 30 days due to a violation of probation or program rules.” (*Id.* at p. 958.) The respondent conceded that section 777 precluded the minor’s removal from his home during the “aftercare” portion of the program without a noticed hearing required under section 777, and the court agreed. (*Id.* at pp. 958-959.) The People make no such concession here. In requiring Minor to “complete all phases of the program,” neither dispositional order empowers a change in Minor’s placement or modifies a prior order, as the impermissible order in *Gabriel T.* did.

As we have concluded above, the juvenile court determines whether and when Minor successfully completes YOTP. To the extent Minor suggests that probation might unfairly evaluate his performance in the program, Minor (or his parent or attorney) retains the ability to raise the issue before the juvenile court by filing a petition under section 778 to change, modify, or set aside its order on the grounds of a changed circumstance. (See *J.C.*, *supra*, 33 Cal.App.5th at p. 747.)

Minor contends a section 778 motion asking the court to review probation’s determinations regarding his progress in YOTP will not cure or mitigate any due process violation. This is so, he says, because such a motion will unfairly require him to prove he has successfully completed a phase of the program, which “subverts due process and turns section 777 on its head.” Minor provides no authority to support his argument that the burden of proof under section 778 will apply unfairly in such circumstances, and the

record does not give us a basis to consider that question. Because the orders do not contravene section 777, Minor's recourse under section 778 does not appear improper.

DISPOSITION

The dispositional orders are affirmed.

Siggins, P. J.

WE CONCUR:

Petrou, J.

Wick, J.*

* Judge of the Superior Court of Sonoma County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.